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June 12, 2019

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141**

Dear Ms. Dortch:

Pursuant to the *Protective Order*<sup>1</sup> in the above-referenced proceeding, Puerto Rico Telephone Company, Inc. d/b/a Claro ("PRTC") submits a redacted version of the notice of ex parte filed as part of the above-referenced proceeding.

PRTC has designated, and received written approval to designate, as Highly Confidential the marked portions of the attached notice of ex parte. The Highly Confidential information appears after the headings *[[begin highly confidential information]]* and before the headings *[[end highly confidential information]]*. Please contact the undersigned with any questions.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "P.R. Guzman", written over a horizontal line.

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<sup>1</sup> *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141, Protective Order (WCB rel. June 1, 2018).*



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**Re: Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No 18-141**

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. d/b/a Claro (“PRTC”) hereby responds to the ex parte letter that WorldNet Telecommunications, Inc. (“WorldNet”) filed in the instant proceeding on May 24, 2019.<sup>1</sup> Reference is made to the following documents that have been filed in the instant proceeding: the ex parte letter that PRTC filed on April 26, 2019 (“PRTC April Ex Parte”); the ex parte letter that PRTC filed on June 11, 2019 (“PRTC June Ex Parte”), the Reply Comments that PRTC filed on September 5, 2018 (“PRTC Reply Comments”); and the Petition for Forbearance of USTelecom – The Broadband Association, which was filed on May 4, 2018 (“Petition”).<sup>2</sup>

**I. RESPONSE TO THE WORLDNET MAY EX PARTE**

**A. The WorldNet May Ex Parte Rehashes Various Arguments that PRTC Already Has Refuted**

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<sup>1</sup> Letter from Richard Davis, Counsel to WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (filed Mar. 1, 2019) (“WorldNet March Ex Parte”); Letter from Richard Davis, Counsel to WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (filed Apr. 22, 2019) (“WorldNet April Ex Parte”).

<sup>2</sup> Petition for Forbearance of USTelecom – The Broadband Association, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (filed May 4, 2018).



The WorldNet May Ex Parte sets forth two arguments to which PRTC already has responded in this proceeding. First, WorldNet argues that “the import of PRTC’s statistics about its purported loss of wireline subscribers” is “undercut” by its claim that PRTC “controls nearly two-thirds of Puerto Rico’s wireline market.”<sup>3</sup> PRTC already addressed this argument in the PRTC June Ex Parte, where it explained, among other things, that WorldNet’s claim that PRTC “controls nearly two-thirds of the Puerto Rico wireline market” is based on outdated data, and mistakenly attempts to limit the Commission’s analysis of market conditions solely to an examination of wireline connections.<sup>4</sup> Moreover, PRTC has submitted and referred to substantial amounts of data (beyond that related to PRTC switched access lines) to show that each segment of the Puerto Rico telecommunications market is subject to competition, that the ILEC share in each of these segments has decreased significantly, and that in this environment the UNE and Resale Obligation already have been rendered irrelevant.<sup>5</sup> PRTC respectfully refers the Commission to these discussions as a response to WorldNet’s argument.

Second, WorldNet questions whether PRTC “has any standing to seek relief in the proceeding” on the theory that it is not a member of USTelecom.<sup>6</sup> PRTC responded to this argument in the PRTC Reply Comments, where it explained that the Commission already has ruled that USTelecom may ask for forbearance relief that would extend to non-members.<sup>7</sup>

**B. How the Commission Uses Universal Service Funds to Restore and Expand Broadband Service in Puerto Rico Will Not Change the Fact that the UNE and Resale Obligation Has Become Irrelevant to Competition**

WorldNet attempts to support the claim that Puerto Rico is an outlier when it comes to competition for telecommunications services by pointing to the *Uniendo a Puerto Rico Fund and the Connect USVI Fund* proceeding<sup>8</sup> and arguing that PRTC’s proposal in that proceeding “would just cement PRTC’s already substantial market dominance.”<sup>9</sup> PRTC has filed extensive comments in the *Uniendo a Puerto Rico Proceeding*, which is the proper forum to discuss the impact of any proposals and/or comments on the Order and Notice of Proposed Rulemaking that the Commission issued therein. For purposes of the instant proceeding, it suffices to note that WorldNet’s argument confirms its confusion regarding the objectives of the instant proceeding. The question here is whether the UNE and Resale Obligation continues to be necessary when undisputed data show that it already has become *irrelevant* to the manner in which

<sup>3</sup> WorldNet May Ex Parte at 1.

<sup>4</sup> See PRTC June Ex Parte at 3.

<sup>5</sup> See PRTC April Ex Parte at 7-9.

<sup>6</sup> WorldNet May Ex Parte at 2.

<sup>7</sup> See PRTC Reply Comments at 4-5.

<sup>8</sup> See *Uniendo a Puerto Rico Fund and the Connect USVI Fund, Order and Notice of Proposed Rulemaking*, WC Docket No. 18-143, WC Docket No. 10-90, WC Docket No. 14-58 (rel. May 29, 2018) (“*Uniendo a Puerto Rico Proceeding*”).

<sup>9</sup> WorldNet May Ex Parte at 1.

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telecommunications services are offered in Puerto Rico. Granting PRTC's proposal for a right of first refusal in the *Uniendo a Puerto Rico Proceeding* will not change that fact; if anything, PRTC's commitment under its proposal to deploy fiber-to-the-home (FTTH) and fixed wireless networks highlights that the future of Puerto Rico is tied to the continued deployment of the very technologies that have made the UNE and Resale Obligation irrelevant.

**C. The Commission Can and Should Consider the Data that PRTC Has Submitted and Referenced**

WorldNet also advances a new theory in the WorldNet May Ex Parte: that the Commission may not consider the data that PRTC provided in the PRTC April Ex Parte because "none of the data . . . was included with the USTelecom Petition."<sup>10</sup> WorldNet is wrong for various reasons.

First, a significant portion of the data that PRTC referred to in the PRTC April Ex Parte was derived directly from Commission reports and copies of Form 477 filed with the Commission. Nothing in the Commission's rules or precedent precludes the Commission from considering its own data when granting forbearance, especially when both USTelecom and the carriers that have opposed the Petition have relied on that same data.

Second, neither the Commission's rules nor its precedent preclude the Commission, whether on its own or through its Bureaus, to develop the record beyond what was submitted in the Petition. Here, staff of the Wireline Competition Bureau asked PRTC to update the data regarding wireline connections that it had submitted in the PRTC Reply Comments and to provide additional information regarding the state of competition in Puerto Rico and the use of UNEs by non-ILECs in Puerto Rico. The notion that the Commission does not have the authority to request and consider such data is absurd.<sup>11</sup>

Third, WorldNet's argument is based on the flawed premise that the PRTC April Ex Parte was submitted to address a gap or factual deficiency in the Petition. PRTC believes—and reaffirms—that the Petition, as filed, is sufficient to confer nationwide forbearance relief. PRTC has referred the Commission to other data because *WorldNet* advanced the theory that Puerto Rico was an outlier and should be excluded from any grant of forbearance in accordance with the Petition. Having asked the Commission to restrict the relief requested in the Petition—which expressly asked for nationwide relief and did not argue that any jurisdiction was an outlier—WorldNet cannot now complain if PRTC presents data showing that WorldNet's claim is wrong.

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<sup>10</sup> WorldNet May Ex Parte at 1-2.

<sup>11</sup> See Reply Comments of USTelecom—The Broadband Association at 15-16, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, WC Docket No. 17-144, WC Docket No. 16-143, WC Docket No. 05-25 (filed May 28, 2019) ("Hence, the rules stemming from the *Forbearance Procedures Order* make clear that a 'petition may submit substantively new material, including new information, data, studies or arguments, at the request of the Commission.'").



#### **D. The Economic Conditions in Puerto Rico Do Not Show an Absence of Competition in Puerto Rico**

WorldNet also argues that PRTC is not addressing the current economic conditions in Puerto Rico, to which WorldNet refers as “the proverbial elephant in the room when it comes to evaluating the anticipated effect of forbearance on Puerto Rico.”<sup>12</sup> Although it neither provides nor refers to any data showing that the economic conditions have precluded the emergence of competition in the offering of telecommunications services in Puerto Rico, WorldNet asserts that “no one can argue that the market disruption will not be overwhelming in Puerto Rico” and goes as far as claiming—without any data to support it—that “companies” in Puerto Rico may not be able to “survive” if forbearance is granted.<sup>13</sup>

As a threshold matter, PRTC notes that it has addressed—and rebutted—WorldNet’s argument that the economic conditions preclude extending the requested forbearance relief to Puerto Rico.<sup>14</sup> As PRTC has explained, WorldNet’s claim is based on the flawed assumption that during challenging economic times there can be no competition in the telecommunications market. In fact, two things *already happened* during the challenging economic conditions that WorldNet claims preclude the elimination of the UNE and Resale Obligation in Puerto Rico: (1) carriers have prepared for and have transitioned to business models that do not depend on the UNE and Resale Obligation and (2) customers have voluntarily switched to services that do not rely on the UNE and Resale Obligation.<sup>15</sup> These undisputed facts contradict WorldNet’s argument.

Equally flawed are WorldNet’s assertions that “no one can argue that the market disruption will not be overwhelming in Puerto Rico” and that “companies” in Puerto Rico may not “survive” the purported disruptions that the elimination of the UNE and Resale Obligation would cause.<sup>16</sup> The data that PRTC has presented show that the “disruption” to which WorldNet refers is already taking place in Puerto Rico. The relevant facts in support of this conclusion are undisputed: (1) **[[begin highly confidential information]]** **[[end highly confidential information]]**, every non-ILEC in Puerto Rico has either shifted its business model away from the use of UNE and Resale Obligation or from the outset relied on a business model that did not rely at all on the UNE and Resale Obligation; (2) the total number of UNE loops that PRTC leases represents less than **[[begin highly confidential information]]** **[[end highly confidential information]]** percent of total wirelines connections in Puerto Rico; and (3) the vast majority of non-ILEC lines in Puerto Rico today are not served by CLECs that rely on the UNE and Resale Obligation.<sup>17</sup> WorldNet’s own experience casts doubt on the theory that Puerto Rico

<sup>12</sup> WorldNet May Ex Parte at 2.

<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., PRTC June Ex Parte at 7; PRTC Reply Comments at 3-4.

<sup>15</sup> PRTC June Ex Parte at 7.

<sup>16</sup> WorldNet May Ex Parte at 2.

<sup>17</sup> See PRTC April Ex Parte at 10.

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companies somehow cannot migrate to services that are independent of the UNE and Resale Obligation. WorldNet’s dramatic reduction in its use of UNE loops suggests that WorldNet has lost customers that have decided that they indeed can switch to another carrier that does not rely on UNE loops as part of its business model. Or, it means that WorldNet has retained customers after they decided that they could switch to WorldNet offerings—if any in fact currently exist—that do not rely on or use UNE loops. Either way, it is plain that Puerto Rico carriers and consumers already have transitioned away from the UNE and Resale Obligation—and far from being “overwhelmed,” they have done so during the challenging economic times that have hit Puerto Rico.

**E. WorldNet’s Real Complaint Is that the Elimination of the UNE and Resale Obligation Will Disrupt Its Business Model**

Finally, WorldNet tries to dismiss as “utterly simplistic and wrong” PRTC’s showing that eliminating the UNE and Resale Obligation would not affect competition negatively.<sup>18</sup> According to WorldNet, relying on “the purportedly small number of providers in Puerto Rico” that use UNEs and resell ILEC telecommunications services is “misleading and inappropriate to measure the impact of forbearance” and does not “indicate the scope of the role” that non-ILEC that rely on the UNE and Resale Obligation “play in the Puerto Rico market.”<sup>19</sup> There are several flaws in WorldNet’s argument.

First, WorldNet’s description of Puerto Rico as a jurisdiction where a “small number” of providers rely on the UNEs and Resale Obligation is inaccurate. Undisputed data show that only *[[begin highly confidential information]]* *[[end highly confidential information]]* in Puerto Rico—*[[begin highly confidential information]]* *[[end highly confidential information]]*—is still relying on a business model that assumes that continued existence of the UNE and Resale Obligation. An accurate statement is that Puerto Rico is a jurisdiction where *[[begin highly confidential information]]* *[[end highly confidential information]]* continues to make use of the UNE and Resale Obligation in any significant way.

Second, WorldNet appears to be confused as to the implications of the fact it is the *[[begin highly confidential information]]* *[[end highly confidential information]]*. The issue in this proceeding is not whether non-ILEC’s that continue to rely on the UNE and Resale Obligation contribute to the Puerto Rico economy or whether they contributed to the promotion of competition twenty years ago. Instead, the question is whether the continued enforcement of the UNE and Resale Obligation is necessary *today* to ensure that telecommunications services are offered at rates, terms, and conditions that are just and reasonable and not unjustly or unreasonably discriminatory.<sup>20</sup> That only *[[begin highly*

<sup>18</sup> WorldNet May Ex Parte at 2.

<sup>19</sup> *Id.* at 2-3.

<sup>20</sup> See 47 U.S.C. § 160(a)(1)-(3); *United States Telecom Ass’n v. FCC*, 825 F.3d 674, 727 (D.C. Cir. 2016); see also Petition at 20-21.



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*confidential information]]*

*[[end highly confidential information]]* and that the vast majority of non-ILEC lines in Puerto Rico today are *not* served by CLECs that rely on the UNE and Resale Obligation provides the answer that is relevant in this proceeding: *today*, the UNE and Resale Obligation is irrelevant to competition and consumer choice in Puerto Rico.

Third, the WorldNet May Ex Parte suggests that WorldNet’s real concern is not that consumers will be harmed, but that it will be forced to change its business plan.<sup>21</sup> That, however, is not a legitimate reason to object to the elimination of the UNE and Resale Obligation, much less to treat Puerto Rico differently. The key consideration in this proceeding is what is best for *competition*, not what is best for WorldNet. As USTelecom has shown by citing to Commission precedent, “[t]he Commission long ago made clear that unbundling was not meant to prop up specific carriers whose business models could not succeed absent UNEs, so long as reasonably efficient providers could do so.”<sup>22</sup> The undisputed fact is that in Puerto Rico—as in the rest of the United States—“only a miniscule proportion of competitive offerings rely on UNEs in the first place,”<sup>23</sup> which confirms that the UNE and Resale Obligation already has been rendered irrelevant when it comes to promoting competition in Puerto Rico today.

## II. CONCLUSION

For the reasons set forth above, in the Petition, in the PRTC Reply Comments, and the ex parte communications that PRTC has filed in the instant proceeding, the USTelecom Petition should be granted and Puerto Rico should not be excluded from said grant of forbearance.

Respectfully submitted,



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<sup>21</sup> WorldNet May Ex Parte at 2 (complaining that the elimination of the UNE and Resale Obligation would cause it to “endure major market disruption”).

<sup>22</sup> USTelecom Reply Comments at 9.

<sup>23</sup> *Id.* at 9.